



**FEND INCORPORATED**  
**TERMS AND CONDITIONS OF SALE**

Last Modified: 6/03/2022

These Customer Terms and Conditions (this "**Agreement**"), effective as of the date on which you click a button or check a box (or something similar) acknowledging your acceptance of this Agreement (the "**Effective Date**"), is by and between Fend Incorporated, a Virginia corporation ("**Fend**") and the entity on whose behalf the individual accepting this Agreement accepts this Agreement ("**Customer**"). The individual accepting this Agreement hereby represents and warrants that it is duly authorized by the entity on whose behalf it accepts this Agreement to so accept this Agreement. Fend and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

These terms do not govern the provision by Fend, or purchase by Customer, of any software or cloud services. The Parties acknowledge and agree that any provision or purchase of software or cloud services from Fend shall be governed by a separate agreement between the Parties.

**Quotations** are exclusive of delivery and installation charges, if any, and all taxes, unless specifically noted. Quotes are subject to home office approval and may be withdrawn or changed in the event of a price increase by Fend Incorporated's suppliers. Typographical and/or clerical errors are subject to correction at any time. The following terms and conditions apply unless otherwise stipulated in the quotation. This quote is not an invoice.

**Payment:** Unless payment terms are otherwise stipulated on the front of an invoice, payment is due upon delivery. If any payment is not made when due, a late payment charge of \$15 will be assessed and interest at the rate of eighteen percent (18%) per annum will be charged on the outstanding balance from the date of shipment or invoice, whichever is later. Fend Incorporated has the right to declare all invoice amounts due and payable without notice to the Buyer. If a check is dishonored, the Buyer agrees to pay a \$25 processing fee to Fend Incorporated. The Buyer further agrees to pay a 15% restocking fee plus all shipping charges on returned or refused on delivery merchandise. The Buyer agrees to pay all collection costs, court costs, and other expenses to the amount limited by law, including attorney's fees, which will be the greater of one-third or \$250. Any change in liability for debts incurred due to a change in the Buyer's form of business shall not be effective until Fend Incorporated receives notice of the change by certified mail.

**Credit Agreements:** A credit application form must be signed to do business with Fend Incorporated except for transactions on a COD cash/cashiers or credit card basis. A credit limit will be established for each Buyer based on their credit record. Buyers wishing to purchase more than their credit limit must get authorization. Otherwise, the amount in excess of their credit line is due at the time of delivery. A personal or company check (as applicable) for the purchase amount is acceptable as payment from Buyers with a credit line. Fend Incorporated reserves the right to adjust, suspend, or terminate a credit line at any time.

**Title** to products sold by Fend Incorporated passes to the Buyer only upon full payment of the purchase price and any other charges notwithstanding delivery of possession to the Buyer. The Buyer agrees that if failure to pay Fend Incorporated all sums due it on time, time being of the essence, the Buyer shall automatically forfeit all rights to possession of products sold, and Fend Incorporated shall have the right to immediately recover the same. All costs of recovering the products shall be the sole responsibility of the Buyer. Furthermore, notwithstanding the recovery of the products by Fend Incorporated, the Buyer shall remain liable for the full purchase price and all other costs, less any net amounts received by Fend Incorporated upon resale of the products, if a resale should occur. In addition to the above, if the Buyer fails to fulfill these obligations, Fend Incorporated has the rights and remedies available to it under the Uniform Commercial Code and the laws of Virginia.

**Claims** of a shortage, misshipment, or damaged goods must be received in writing by Fend Incorporated within 5 business days of Buyer's receipt of the goods or the goods will be deemed delivered and accepted as of the invoice date.

**Delivery:** Shipments of all products are subject to availability. Fend Incorporated will make every reasonable effort to meet quoted or acknowledged delivery date(s). Fend Incorporated will not be liable for the failure to meet such date(s). Buyer agrees to accept delivery within ten (10) days of notice that its products are available.

**Warranties:** Fend Incorporated provides a limited 1-year warranty for all its products from the date of shipment FOB Arlington, Virginia. Fend Incorporated warrants, that at the time of delivery, the goods shipped under this agreement are in accordance with Fend Incorporated's published specifications or are in accordance with "agreed to" written customers'



specifications. The warranty delivered to Fend Incorporated by the manufacturer of components used in Fend Incorporated's manufacturing, or other vendor thereof, shall be assigned to the Buyer, to the extent such assignment is permitted by the terms thereof. Notwithstanding the foregoing, no such warranty shall apply to any goods which have been altered or repaired, except by Fend Incorporated or the manufacturer, or which have been subjected to misuse, negligence or accident. Such warranties are expressly in lieu of any other, and Fend Incorporated makes no other warranty, expressed or implied, with respect to the goods, and in particular. Fend incorporated disclaims any warranty with respect to the merchantability of such goods or the fitness of such goods for a particular purpose or use. In no event will Fend Incorporated be liable for indirect, special, or consequential damages, including lost profits, even when Fend Incorporated has been advised of the possibility of such damages. The Buyer agrees that Fend Incorporated's liability for any allegedly defective product and/or service shall not exceed the Buyer's purchase price or the fair market value of the product at the time the defect is reported, whichever is less.

**Returns** must be authorized in advance. Shipping changes are the responsibility of the Buyer. Fend Incorporated may replace the item, provide credit towards the Buyer's next purchase, or a refund of the purchase price minus a restocking fee of 15%, at its option (see **Payment** above). NO returns will be allowed after 30 days.

**Indemnities:** The Buyer agrees to indemnify and hold harmless Fend Incorporated and its representatives against all claims, suits, damages, penalties, losses and expenses, including reasonable attorney fees, (1) for products or services provided at the Buyer's request, including, but not limited to, claims related to loss of data or other consequential damage; (2) for representations the Buyer has made to others, including, but not limited to, consequential damages for late delivery of equipment or delivery of Buyer specified equipment unfit for its intended use.

**Order of Precedence:** Buyer's signature represents acceptance of these Terms and Conditions of Sale and any attachments, which together constitute the entire understanding between the parties and supersede and previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. These Terms and Conditions of Sale and any attachments take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given. Neither Fend Incorporated commencement of performance nor delivery shall be deemed or construed, as acceptance of Buyer's additional or different terms.

**Export:** Fend products are intended for installation and use in the United States and countries approved for export. Buyer acknowledges that Fend products are subject to U.S. export control and sanctions laws and regulations, including, without limitation, the Export Administration Regulations (15 C.F.R. §§ 730-774), and the regulations, rules, and executive orders administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") (collectively, the "Export Controls and Sanctions Laws"). Buyer agrees to comply with all Export Controls and Sanctions Laws applicable to Fend products and shall not take any action that will cause Fend to violate or be subject to penalty under any Export Controls and Sanctions Laws.

In particular, Buyer warrants and covenants that it:

- (a) will not, directly or indirectly, export, reexport, or transfer Fend products to, or transship Fend products through, a country against which the United States maintains economic sanctions or embargoes (hereinafter, "Sanctioned Country");
- (b) will not, directly or indirectly, export, reexport, sell, lease, transfer, or otherwise assign the rights to Fend products to a Prohibited Person;
- (c) will not use Fend products to produce products that will be shipped, sold, or supplied, directly or indirectly, to a Sanctioned Country or a Prohibited Person.
- (d) will not, directly or indirectly, export, reexport, or transfer Fend products to any party or destination without obtaining or relying upon any necessary authorization under applicable Export Controls and Sanctions Laws, including, but not limited to, a general license, specific license, or license exception; and
- (e) will not, directly or indirectly, export, reexport, transfer, sell, or use Fend products in support of activities, end-uses, or end-users prohibited by applicable Export Controls and Sanctions Laws

"Prohibited Person" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency, or instrumentality thereof, of any Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a



Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or the OFAC Consolidated Sanctions List, as amended from time to time, or any entity that is directly or indirectly owned 50% more (individually or in the aggregate) or otherwise controlled by individuals or entities identified on either list; or (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State.

**Limitations on Reverse Engineering, Decompilation, Disassembly, or Modification.** Buyer acknowledges that the products contain trade secrets of Fend Incorporated or its suppliers or licensors, including but not limited to the specific internal design and structure. Except as otherwise expressly provided under these Terms and Conditions of Sale, Buyer shall only use the products in connection with the protection of Buyer's network data. Buyer may not, and shall not cause or encourage any third party to, reverse engineer, decompile, decrypt, or disassemble or otherwise attempt to discover the hardware, source code, or underlying ideas or algorithms of the hardware, firmware, or software; reproduce, modify, adapt, translate, recast, alter, or create derivative works from the hardware, firmware, or software or any portion of it; conduct any benchmark tests or comparisons with any other products provided by a third party; evaluate the products for commercial purposes; use the product, directly or indirectly through any third party, to commence any interference or opposition proceeding with respect to challenges, the validity, or enforceability of, or oppose any extension of, or the grant of a supplementary protection certificate with respect to, any patent right or any other IP or registrations thereof; or provide or disclose any such hardware, firmware, or software or any portion of it to any third party, except and only to the extent that such activity is expressly permitted by applicable law, or by prior written approval of Fend Incorporated (which approval may be conditioned, restricted, or denied at the sole discretion of Fend), notwithstanding this limitation. The Buyer agrees to indemnify and hold harmless Fend Incorporated and its representatives against all losses and expenses, including reasonable attorney fees, arising from any breach of this Section by Buyer or by a third party acting on behalf of, or at the direction of Buyer.

**End Use Certification.** Buyer represents that they are the end-user of the product. Product may not be resold, transferred, or otherwise disposed of to any other organization or person other than authorized end-user(s), either in its original form or after being incorporated into other items, unless intent to distribute/resell is made known in writing to Fend at the time of purchase. Such intention to distribute/resell may be conditioned, restricted, or denied at the sole discretion of Fend.

**Cloud Services:** These terms do not govern the provision by Fend Incorporated, or purchase by Buyer, of any cloud software or associated services. The Parties acknowledge and agree that any provision or purchase of cloud software or associated services from Fend shall be governed by a separate agreement between the Parties.

**Miscellaneous:** This Agreement is made in, and is governed by the laws of the Commonwealth of Virginia and, in the event of a dispute, Virginia Courts shall have exclusive jurisdiction. The Buyer's remedies herein are exclusive. Any provision hereof which is invalid under an applicable statute or rule of law should be curtailed and limited only to the extent necessary to bring it within the requirements of the law. All other provisions of this Agreement shall remain in full force and effect.